

1 **WO**

2  
3  
4  
5  
6 IN THE UNITED STATES DISTRICT COURT  
7 FOR THE DISTRICT OF ARIZONA

8  
9 Kristen Burnham, individually and as  
10 representative of the estate of Caroline  
Burnham,

11 Plaintiff,

12 vs.

13 United States of America,

14 Defendant.

No. CV07-8017-PCT-DGC

**ORDER**

15 Plaintiff has filed a motion for new trial. Doc. 195. For the reasons that follow,  
16 the motion will be denied.

17 Plaintiff again complains that the Court erred in excluding the expert testimony of  
18 Anselmo Nagera. The Court explained its reasons for excluding his testimony, in detail,  
19 on July 20, 2009. *See* Doc. 118 at 8-10. Mr. Nagera was not timely disclosed as an  
20 initial expert by Plaintiff, and Plaintiff's subsequent attempt to disclose him as a rebuttal  
21 expert was inappropriate for reasons explained in the Court's previous order. Doc. 118.  
22 The Court's order was not set aside by the Ninth Circuit on appeal, and other courts have  
23 agreed with the conclusion. *See, e.g., Atmel Corp. v. Information Storage Devices, Inc.*,  
24 189 F.R.D. 410, 416 (N.D. Cal. 1999) ("to now allow Mr. Kern to testify on direct  
25 examination to matters deliberately ignored in his Rule 26(a)(2)(B) report would simply  
26 encourage litigants to evade the expert-disclosure rules. It would disrupt the orderly  
27 process of trial preparation to require a new round of expert reports and a new round of  
28 expert depositions"); *see also Crowley v. Chait*, 322 F. Supp. 2d 530, 551 (D. N.J. 2004)


1 (an expert's rebuttal report "is not an opportunity for the correction of any oversights in  
2 the plaintiff's case in chief.").

3 Plaintiff's motion takes issue with factual findings made by the Court after trial.  
4 Such disagreement does not provide a basis for a new trial.

5 Plaintiff asks the Court to order post-trial mediation. Given that Defendant  
6 prevailed at trial, the Court sees no basis for such an order.

7 **IT IS ORDERED** that Plaintiff's motion for a new trial (Doc. 195) is **denied**.

8 Dated this 20th day of October, 2011.

9  
10  
11 

12 \_\_\_\_\_  
13 David G. Campbell  
14 United States District Judge  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28